United States Department of Labor
Employees' Compensation Appeals Board

I.L., Appellant	)	
and	)	**Docket No. 17-1113**
	)	**Issued: September 15, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Middle Village, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 1, 2017 appellant, through counsel, filed a timely appeal from a March 10, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury on November 4, 2015 causally related to factors of her federal employment.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 6, 2015 appellant, then a 32-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) for a right arm condition that allegedly arose in the performance of duty on November 4, 2015. She reportedly experienced pain in her right shoulder, elbow, and hand, which she attributed to pushing a mail cart and delivering mail. Appellant stopped work on November 6, 2015 and received continuation of pay.

In an attending physician's report (Form CA-20) dated November 5, 2015, Dr. Neofitos Stefanides, an attending Board-certified orthopedic surgeon, listed the date of injury as November 4, 2015 and the history of injury as continuous pushing and pulling of a mail cart. He diagnosed cervical spine sprain/radiculopathy, right shoulder impingement/bursitis, right elbow sprain, and right thumb sprain. Dr. Stefanides checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. In a form entitled Authorization for Examination And/Or Treatment (Form CA-16) dated November 5, 2015, he listed the history of injury as repetitive and continuous pushing of a mail cart, diagnosed cervical spine radiculopathy, and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. Dr. Stefanides found total disability from November 4 to December 4, 2015.

In a November 6, 2015 narrative report, Dr. Stefanides indicated that appellant reported she was delivering mail while pushing and pulling a heavy mail cart on November 4, 2015 and felt a burning pain which radiated from her right neck down through her right shoulder, elbow, wrist, and thumb. He listed the mechanism of injury as "continuous and repetitive pulling, pushing, maneuvering mail cart with right arm" and noted that appellant denied any prior injuries. Dr. Stefanides reported the findings of his November 6, 2015 physical examination noting that appellant had 4/5 strength and intact sensation in her upper extremities, and tenderness to palpation in her right shoulder, elbow, and finger (unspecified digit). He diagnosed neuritis/radiculitis of the cervical region/upper limbs, shoulder impingement, bursitis, finger sprain/strain, and elbow sprain/strain and found that appellant was temporarily totally disabled from her usual work activities. Dr. Stefanides provided an opinion that, based on her history, physical examination, and x-ray findings, appellant's physical injuries were causally related to "the accident noted above."

In a duty status report (Form CA-17) dated November 6, 2015, Dr. Stefanides listed the date of injury as November 4, 2015 and noted that appellant reported feeling pain in her right shoulder, elbow, and hand while delivering mail on that date. He listed the "diagnosis due to injury" as cervical spine radiculopathy and indicated that appellant was temporarily totally disabled. In a November 20, 2015 form entitled work capacity evaluation (Form OWCP-5c), Dr. Stefanides indicated that appellant could not work. Appellant was unable to engage in any lifting, carrying, pushing, or pulling.

The employing establishment controverted appellant's claim for a November 4, 2015 work injury. In a November 10, 2015 letter, a human resources management specialist with the employing establishment noted that while appellant advised Dr. Stefanides that she had no prior injuries, appellant had previously filed claims with OWCP, including a claim for an October 7, 2014 right arm injury assigned OWCP File No. xxxxxx446 which OWCP denied. The

employing establishment representative further noted that appellant did not report her claimed November 4, 2015 injury until November 6, 2015.

In a November 16, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It asked her to complete a questionnaire which posed various questions regarding her work duties on November 4, 2015 and the nature of her claimed injury. On November 16, 2015 OWCP also requested additional information from the employing establishment.

In a December 3, 2015 statement, appellant indicated that the mail cart she used on November 4, 2015 had no brakes and that she had to apply force to make the cart stop when going down hills. She reported that she pushed and pulled the cart for about four hours on that date. Appellant indicated that she did not report her claimed November 4, 2015 injury sooner because she initially thought her symptoms were from a prior accident. She also noted that Dr. Stefanides had previously treated her for a right elbow injury from 2014. Appellant clarified that Dr. Stefanides had not previously treated her for cervical sprain/radiculitis.

OWCP also received additional medical evidence. A November 20, 2015 cervical magnetic resonance imaging (MRI) scan revealed straightening of the cervical lordosis without listhesis, degenerative disc disease at C4-5 and C5-6, and small central disc protrusions at C4-5 and C5-6 without cord deformity, central canal stenosis, or foraminal stenosis.

In a November 20, 2015 report, Dr. Stefanides indicated that he saw appellant in his office on November 20, 2015 and noted that the clinical evaluation showed that she had a herniated nucleus pulposus of a cervical disc and neuritis/radiculitis of the cervical region/upper limbs. He reported that appellant's neck and right upper extremity symptoms were of cervical etiology and that cervical sprain/radiculitis was the only pathology causally related to "this work accident." Dr. Stefanides indicated that he had not previously treated appellant for a cervical pathology, although he had previously treated her for an elbow pathology which had a "separate location and distinct etiology for pain." He posited that appellant's neck and right upper extremity pain were likely due to a pinched nerve in her neck.

In a November 20, 2015 Form CA-17, Dr. Stefanides listed the date of injury as November 4, 2015 and noted that appellant reported feeling pain in her right shoulder, elbow, and hand while delivering mail on that date. He listed the "diagnosis due to injury" as cervical spine radiculopathy and indicated that appellant was temporarily totally disabled. In a December 4, 2015 Form CA-17, Dr. Stefanides also found that appellant was temporarily totally disabled due to the reported November 4, 2015 injury. On December 4, 2015 he reported findings of his examination on that date and noted that appellant still reported persistent cervical spine and right upper extremity pain.

In a December 22, 2015 decision, OWCP denied appellant's claim for a November 4, 2015 work injury. It accepted that she experienced work factors in the form of pushing/pulling a mail cart and delivering mail on that date, but found that she failed to submit sufficient medical evidence to establish a causal relationship between the accepted work factors and a diagnosed medical condition. OWCP noted that the medical reports submitted by appellant, those of Dr. Stefanides, did not contain a rationalized medical opinion on causal relationship.

Following the decision, OWCP received additional medical evidence.

In a November 17, 2015 form report entitled Initial Examination, Dr. John J. McGee, a Board-certified physiatrist, noted that appellant reported feeling right arm pain after delivering mail with a cart on November 4, 2015. He provided findings on examination and diagnosed cervical sprain/strain, cervical radiculitis, and right shoulder impingement syndrome. Dr. McGee answered "Yes" in response to a question regarding whether the described incident was "the competent medical cause of this injury/illness" and indicated that appellant was totally disabled.

In a December 9, 2015 report, Dr. Mark B. Eisenberg, a Board-certified neurosurgeon, noted that Dr. Stefanides had referred appellant to him and indicated that appellant reported that about one month prior she pushed a heavy cart and felt pain in her neck which radiated down her right upper extremity. He discussed appellant's November 20, 2015 MRI scan of the cervical spine and recommended that she continue with physical therapy and pain management.

In a State of New York form dated December 28, 2015, Dr. McGee listed a date of injury of November 4, 2015, diagnosed cervical neuritis or radiculitis, neck sprain/strain, and unspecified derangement of shoulder joint, and found 100 percent disability. He checked a box marked "Yes" indicating that the described incident was "the competent medical cause of this injury/illness." On January 25, 2016 Dr. McGee diagnosed cervical region radiculopathy, sprain of cervical spine ligaments, and other specific joint derangements of right shoulder. He indicated that appellant was totally disabled.

In Forms CA-17 dated December 30, 2015 and January 29, 2016, Dr. Stefanides listed the date of injury as November 4, 2015 and noted that appellant reported feeling pain in her right shoulder, elbow, and hand while delivering mail on that date. He listed the "diagnosis due to injury" as right cervical radiculitis and indicated that appellant was temporarily totally disabled. On February 26, 2016 Dr. Stefanides diagnosed shoulder impingement, bursitis, and neck sprains/strains.[3]

In a State of New York form report dated January 25, 2016, Dr. Dani Stekel and Dr. Arie Cohen, attending Board-certified chiropractors, provided diagnoses of sprain of cervical spine ligaments and contracture of muscle (unspecified).[4] Appellant also submitted reports from attending physical therapists who described physical therapy sessions conducted between November 19 and December 22, 2015.

On December 12, 2016 appellant, through counsel, requested reconsideration of OWCP's December 22, 2015 decision. He resubmitted copies of appellant's physical therapy and chiropractic treatment records.

[3] A February 26, 2016 right shoulder MRI scan revealed tendinosis of the supraspinatus and subscapularis tendons, fluid at the biceps tendon sheath and glenohumeral joint, and laterally downsloping type II acromial configuration.

[4] Both reports were countersigned by another chiropractor, Dr. John H. Kraft.

In a March 10, 2017 decision, OWCP denied modification of its December 22, 2015 decision denying appellant's claim for a November 4, 2015 work injury. It noted that the new reports submitted by appellant did not contain a rationalized medical opinion relating a diagnosed medical condition to the accepted work factors.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[9]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[10] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[11] Additionally, chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.[12]

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[5] *Supra* note 2.

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[10] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[11] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[12] 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

ANALYSIS

Appellant filed a traumatic injury claim alleging that on November 4, 2015 she sustained an injury to her right arm due to pushing/pulling a mail cart and delivering mail at work. In December 22, 2015 and March 10, 2017 decisions, OWCP denied appellant's claim. However, it accepted that appellant experienced work factors in the form of pushing/pulling a mail cart and delivering mail on that date, but found that she failed to submit sufficient medical evidence to establish causal relationship between the accepted work factors and a diagnosed medical condition.

The Board finds that appellant failed to submit sufficient medical evidence to establish causal relationship between the accepted work factors of November 4, 2015, *i.e.*, pushing/pulling a mail cart and delivering mail, and a diagnosed medical condition.

In a Form CA-20 dated November 5, 2015, Dr. Stefanides, an attending physician, listed the date of injury as November 4, 2015 and the history of injury as continuous pushing and pulling of a mail cart. He diagnosed cervical spine sprain/radiculopathy, right shoulder impingement/bursitis, right elbow sprain, and right thumb sprain. Dr. Stefanides checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. Similarly, in a Form CA-16 dated November 5, 2015, he listed the history of injury as repetitive and continuous pushing of a mail cart, diagnosed cervical spine radiculopathy, and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. Dr. Stefanides found total disability from November 4 to December 4, 2015.

The Board notes that the submission of these reports do not establish appellant's claim for a November 4, 2015 work injury because the reports lack sufficient probative value on this matter. The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[13] As Dr. Stefanides did no more than check a box marked "Yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. He did not discuss the accepted November 4, 2015 work factors in any detail or describe the medical process through which they could have been competent to cause or aggravate the diagnosed conditions. Dr. Stefanides did support his opinion with objective findings on physical examination or diagnostic testing.

In a November 6, 2015 narrative report, Dr. Stefanides indicated that appellant reported she was delivering mail while pushing and pulling a heavy mail cart on November 4, 2015 and felt a burning pain which radiated from her right neck down through her right shoulder, elbow, wrist, and thumb. He diagnosed neuritis/radiculitis of the cervical region/upper limbs, shoulder impingement, bursitis, finger sprain/strain, and elbow sprain/strain and found that appellant was

[13] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

temporarily totally disabled from her usual work activities. Dr. Stefanides provided an opinion that, based on her history, physical examination, and x-ray findings, appellant's physical injuries were causally related to "the accident noted above." This report is of limited probative value on the relevant issue of this case because Dr. Stefanides did not provide an adequate explanation for his opinion on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion on causal relationship which is unsupported by medical rationale.[14] Although Dr. Stefanides generally referenced appellant's history, physical examination, and x-ray findings[15] in support of his opinion, he did not describe which specific aspects of these factors led him to conclude that appellant sustained a work injury on November 4, 2015.

In Forms CA-17 dated November 6, 20, December 4, 30, 2015, and January 29, 2016, Dr. Stefanides listed the date of injury as November 4, 2015 and noted that appellant reported feeling pain in her right shoulder, elbow, and hand while delivering mail on that date. He listed the "diagnosis due to injury" as cervical spine radiculopathy and indicated that appellant was temporarily totally disabled. These reports of are of limited probative value with respect to whether appellant sustained a November 4, 2015 work injury because Dr. Stefanides did not provide any medical rationale in support of his opinion that appellant sustained a cervical condition on that date.[16]

In a November 20, 2015 report, Dr. Stefanides indicated that appellant's cervical sprain/radiculitis was the only pathology casually related to the November 4, 2015 "accident" and posited that appellant's neck and right upper extremity pain were likely due to a pinched nerve in her neck. This report is of limited probative value because Dr. Stefanides did not explain how the accepted November 4, 2015 work factors could have caused or aggravated such a pinched nerve. He did not present objective findings to support his opinion on causal relationship.[17]

In a November 17, 2015 form report, Dr. McGee, an attending physician, noted that appellant reported feeling right arm pain after delivering mail with a cart on November 4, 2015. He diagnosed cervical sprain/strain, cervical radiculitis, and right shoulder impingement syndrome. Dr. McGee answered "Yes" in response to a question regarding whether the described incident was "the competent medical cause of this injury/illness" and indicated that appellant was totally disabled. In a December 28, 2015 form report, he listed a date of injury of November 4, 2015, diagnosed cervical neuritis or radiculitis, neck sprain/strain, and unspecified derangement of shoulder joint, and found 100 percent disability. Dr. McGee checked a "Yes" box indicating that the described incident was "the competent medical cause of this injury/illness." The Board notes that these reports contain opinions on causal relationship which are of limited probative value in that Dr. McGee only checked a "Yes" box or answered "Yes" in

[14] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[15] The Board notes that Dr. Stefanides did not reference any diagnostic test findings in his report.

[16] *Supra* note 14.

[17] *Id*.

response to a form question without providing medical rationale in support of his opinions.[18] Merely placing a checkmark in the "Yes" box will not suffice for purposes of establishing causal relationship.[19] Dr. McGee did not discuss the accepted November 4, 2015 work factors in any detail or describe the medical process through which they could have been competent to cause or aggravate the diagnosed conditions.

In forms dated January 25, 2016, Dr. Dani Stekel and Dr. Arie Cohen, attending chiropractors, provided diagnoses of sprain of cervical spine ligaments and contracture of muscle (unspecified). However, these reports do not support appellant's claim for a November 4, 2015 work injury because they do not constitute probative medical evidence within the meaning of FECA. Under section 8101(2) of FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[20] OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[21] The January 25, 2016 reports of Drs. Stekel and Cohen do not constitute probative medical evidence because they do not indicate that findings of subluxations were demonstrated by x-rays to exist.

Appellant also submitted reports from attending physical therapists who described physical therapy sessions conducted between November 19 and December 22, 2015. However, physical therapists are not considered physicians under FECA and therefore their opinions do not constitute medical opinion evidence and have no weight or probative value on medical matters.[22]

For these reasons, appellant has not established a November 4, 2015 work injury and OWCP properly denied her claim.[23]

Appellant may submit additional evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[18] *See supra* note 13.

[19] *See D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

[20] 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

[21] 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

[22] *C.E.*, Docket No. 14-710 (issued August 11, 2014); *Jane A. White*, 34 ECAB 515 (1983).

[23] Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury on November 4, 2015 due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board